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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,260	04/05/2005	Hermann Maier	18678	4702
23389 7590 09/22/2008 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
LOPEZ, FRANK D				
ART UNIT		PAPER NUMBER		
3745				
MAIL DATE		DELIVERY MODE		
09/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,260

Applicant(s)

MAIER ET AL.

Examiner

F. Daniel Lopez

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on July 28, 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 28, 2008 has been entered.

Response to Amendment

Applicant's arguments with respect to claims 1-9 has been considered but are deemed to be moot in view of the new grounds of rejection. The new grounds of rejection are necessitated by limitations to the annular pressure chamber.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. In claim 1 line 1-2 "pump, which delivers into at least one working line and the displacement volume of which is adjustable" should be -- pump, which delivers into at least one working line a displacement volume of flow, which is adjustable--. In claim 1 line 8 "wherein between the first and the second measuring surface a pressure chamber is formed" should be -- wherein a pressure chamber is formed between the first and second measuring surfaces--. In claim 1 line 9 "a leakage path is formed from the pressure chamber in the direction of the second pressure line" should be -- a leakage path connects the pressure chamber to the second pressure line--. In claim 1 line 13 --to prevent any force acting on said oppositely oriented surfaces from displacing the volumetric control valve--should

be added after "sized," since that is what it is referring to; and deleting "for preventing...valve" in lines 14-15.

Claims 1-9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 13-15 "said annular chamber including a connection to a working pressure line...which is arranged separately from an actuating pressure connection" appears to be wrong. Claim 1 claims a leakage path connecting the annular pressure chamber and the second pressure line (line 9-10) and claims a counterpressure line connecting the annular pressure chamber and the first pressure line. There does not appear to be a third line connecting the annular pressure chamber to any other element. Furthermore, it would appear that the counterpressure line connects the annular chamber to the working line (through the first pressure line, see also claim 3), And therefore is the connection. Note that it is assumed that the phrase "arranged separately from an actuating pressure connection" is referring back to the connection of line 14 and therefore should be deleted, along with the limitation of the connection.

claim 5 does not appear to further limit claim 1, since claim 1 indicates that the control apparatus has a volumetric flow control valve (line 7), which indicates that the control apparatus is a volumetric flow control device.

In claim 6 line 2-3 "a second oppositely measuring surface" appears to be missing a word, such as --oriented-- after "oppositely".

In claim 7 line 1-2 "the pressure chamber is connected by a counterpressure channel to a working line connection" is misleading, since it connects the pressure chamber to the first pressure line.

In claim 9 line 2-3 "a first sealing portion" should be --the sealing portion --, since it appears to be referring back to the sealing portion of claim 6 line 5.

Claims not mentioned are indefinite; since they depend from one of the above claims.

Claim Rejections - 35 USC § 102

Claims 1-9, inasmuch as they are definite, are rejected under 35 U.S.C. § 102(b) as being anticipated by Dantlgraber. Dantlgraber discloses a volumetric flow control apparatus for a hydraulic pump (1), which delivers fluid into a working line (1a) and has an adjusting device (9, 10) for adjusting a displacement of the pump, based on an actuating pressure controlled by a control valve (18); the control valve has first and second pressures loading opposed first and second measuring surfaces (4a, 4b, respectively), respectively, by respective first and second lines (20, 23, respectively); wherein the first pressure is higher than the second pressure; and an annular pressure chamber (18a) is formed between the first and second measuring surfaces, with a leakage flow path between the pressure chamber and the second measuring surface and a counter pressure line (4c, 4d) connected between the pressure chamber and the first line; wherein the first and second lines are connected to the working line and downstream of a throttle (2) in the working line, respectively. A sealing portion (between 4b and 18a) of the valve piston (4) has no seal and must allow the valve to move back and forth, and therefore must have some leakage between it and the surrounding wall.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez
Primary Examiner
Art Unit 3745
September 20, 2008